

IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT  
OF TEXAS AUSTIN DIVISION

FLASHPARKING, INC.

V.

MICHAEL SELLERS MACDONALD

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Civil No. 1:23-CV-772-DII

**PLAINTIFF’S OPPOSED MOTION FOR LEAVE TO FILE A SUR-REPLY**

Pursuant to Local Rule 7(b), Plaintiff FlashParking, Inc. (“FlashParking”) hereby moves for leave to file the Sur-Reply that is attached hereto as Exhibit A.

1. On August 10, 2023, Defendant Michael Sellers MacDonald (“MacDonald”) filed his Motion to Dismiss the Complaint for Improper Venue, Forum Non Conveniens, and in the Alternative, Motion to Dismiss for Failure to State a Claim and Motion to Transfer Venue [Doc. 8] and the related Memorandum of Law [Doc. 9] (collectively, the “Motion”). On August 24, 2023, FlashParking timely filed its Response [Doc. 11]. On August 31, 2023, MacDonald filed his Reply [Doc. 13]. The majority of MacDonald’s Reply is devoted to two brand-new arguments not addressed in his Motion: (1) a motion to dismiss for lack of personal jurisdiction; and (2) a request for attorney’s fees. *See* Doc. 13, pp. 3-6, 9-10.

2. A sur-reply is appropriate when the moving party raises new legal theories or attempts to present new evidence at the reply stage. *Surge Busy Bee Holdings, LLC v. Wiszniewski*, No. 3:19-CV-127-L, 2020 U.S. Dist. LEXIS 63781 at \*35, n. 6 (N.D. Tex. Apr. 13, 2020). Because MacDonald raises two new arguments for the first time in his Reply, a sur-reply would be appropriate so that FlashParking has a fair opportunity to address these arguments.

**PRAYER**

For the foregoing reasons, FlashParking respectfully requests this Court grant its Motion for Leave to file the Sur-Reply attached hereto Exhibit A, and grant FlashParking such additional relief to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF  
FLASHPARKING, INC.

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 7th day of September, 2023, I emailed Defendant's counsel of record asking whether she was opposed to the relief sought in this motion. On September 8, 2023, Defendant's counsel of record indicated she was opposed to the motion.

/s/ Glorieni M. Azeredo  
Glorieni M. Azeredo

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of September, 2023, the foregoing was served upon counsel of record through the Court's CM/ECF filing system:

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